

1 Amend 2 Cal. Code of Regs. section 18708 as follows:

2 **§ 18708. Legally Required Participation.**

3 (a) A public official who has a financial interest in a decision may establish that  
4 he or she is not legally required to make or to participate in the making of a  
5 governmental decision within the meaning of Government Code section 87101  
6 ~~unless~~ only if there exists no alternative source of decision consistent with the  
7 purposes and terms of the statute authorizing the decision.

8 (b) Whenever a public official who has a financial interest in a decision is  
9 legally required to make or to participate in making such a decision, he or she shall  
10 state the existence of the potential conflict as follows:

11 (1) The public official shall disclose the existence of the conflict and describe  
12 with particularity the nature of the economic interest. "Particularity" as used in this  
13 regulation shall be satisfied if the official discloses:

14 (A) whether the conflict involves an investment, business position, interest in  
15 real property, or the receipt of income, loans or gifts;

16 (B) if the interest is an investment, the name of the business entity in which each  
17 investment is held; if the interest is a business position, a general description of the  
18 business activity in which the business entity is engaged; if the interest is real  
19 property, the address or another indication of the location of the property, unless the  
20 property is the official's principal or personal residence, in which case the official  
21 shall disclose this fact. For income, loans or gifts, the official shall disclose the  
22 person or entity that is the source.

1       (2) The public official or another officer or employee of the agency shall give a  
2       summary description of the circumstances under which he or she believes the  
3       conflict may arise.

4       (3) Either the public official or another officer or employee of the agency shall  
5       disclose the legal basis for concluding that there is no alternative source of decision.

6       (4) The disclosures required by this regulation shall be made in the following  
7       manner:

8       (A) If the governmental decision is made during an open session of a public  
9       meeting, the disclosures shall be made orally before the decision is made, by either  
10      the public official or by another officer or employee of the agency. The  
11      information contained in the disclosures shall be made part of the official public  
12      record either as a part of the minutes of the meeting or as a writing filed with the  
13      agency. The writing shall be prepared by the public official and/or any officer or  
14      employee and shall be placed in a public file of the agency within 30 days after the  
15      meeting; or

16      (B) If the governmental decision is made during a closed session of a public  
17      meeting, the disclosures shall be made orally during the open session either before  
18      the body goes into closed session or immediately after the closed session. The  
19      information contained in the disclosures shall be made part of the official public  
20      record either as a part of the minutes of the meeting or as a writing filed with the  
21      agency. The writing shall be prepared by the public official and/or any officer or  
22      employee and shall be placed in a public file of the agency within 30 days after the  
23      meeting; or

1 (C) If the government decision is made or participated in other than during the  
2 open or closed session of a public meeting, the disclosures shall be made in writing  
3 and made part of the official public record, either by the public official and/or by  
4 another officer or employee of the agency. The writing shall be filed with the  
5 public official's appointing authority or supervisor and shall be placed in a public  
6 file within 30 days after the public official makes or participates in the decision.  
7 Where the public official has no appointing authority or supervisor, the  
8 disclosure(s) shall be made in writing and filed with the agency official who  
9 maintains the records of the agency's statements of economic interests, or other  
10 designated office for the maintenance of such disclosures, within 30 days of the  
11 making of or participating in the decision.

12 (c) This regulation shall be construed narrowly, and shall:

13 (1) Not be construed to permit an official, who is otherwise disqualified under  
14 Government Code section 87100, to vote to break a tie.

15 (2) Not be construed to allow a member of any public agency, who is otherwise  
16 disqualified under Government Code section 87100, to vote if a quorum can be  
17 convened of other members of the agency who are not disqualified under  
18 Government Code section 87100, whether or not such other members are actually  
19 present at the time of the disqualification.

20 (3) Require participation by the smallest number of officials with a conflict that  
21 are "legally required" in order for the decision to be made. A random means of  
22 selection may be used to select only the number of officials needed. When an  
23 official is selected, he or she is selected for the duration of the proceedings in all

1 related matters until his or her participation is no longer legally required, or the  
2 need for invoking the exception no longer exists.

3 (d) For purposes of this section, a “quorum” shall constitute the minimum  
4 number of members required to conduct business and when the vote of a  
5 supermajority is required to adopt an item, the “quorum” shall be that minimum  
6 number of members needed for that adoption.

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8 COMMENT: Nothing in the provisions of ~~subdivision~~ subsection (b)(4)(B) is intended to  
9 cause an agency or public official to reveal the confidences of a closed session  
10 contemplated by law. For example, under the Brown Act (Government Code sections  
11 54950 et. seq.) a city council may enter a closed session to discuss personnel matters and  
12 need not publicly disclose the name of the employee who is the subject of the meeting.  
13 (Government Code section 54957.) This regulation does not require a city council person  
14 who is legally required to participate in that closed session to disclose that employee’s  
15 name when the council member makes the record required by this regulation.

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17 NOTE: Authority cited: Section 83112, Government Code.

18 Reference: Sections 81002, 81003 and 87101, Government Code.